UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,767	09/05/2006	Sabrina Higgins	102792-532/11160P1US	6304

27389 7590 10/05/2009

NORRIS, MCLAUGHLIN & MARCUS
875 THIRD AVE
18TH FLOOR
NEW YORK, NY 10022

EXAMINER	
ROONEY, NORA MAUREEN	

ART UNIT	PAPER NUMBER
1644	

MAIL DATE	DELIVERY MODE
10/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/595,767	HIGGINS ET AL.	
	Examiner	Art Unit	
	NORA M. ROONEY	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) *9,10 and 13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,11 and 12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *05/10/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election with traverse of Group I, claims 1-12 in the reply filed on 02/10/2009 and the species of a deactivant comprising citrus oil in the reply filed on 06/15/2009 is acknowledged. The traversal is on the ground(s) that "As an examination of the claims will confirm, at least the subject matter of the claims of Group I and Group II comprise overlapping subject matter, viz., the identity of certain of the compounds useful in deactivating allergens, and thus are believed to render the Group I and Group II claims to be closely technically related. Due to the closely related subject matter, namely in the identification of some of the same compounds useful in deactivating allergens in the Group I and Group II claims, it is believed that there would be no undue burden placed upon the Examiner in performing a single search which would be commensurate with the scope of the claimed invention for *all* of the currently pending claims, and thus obviate the Examiner's basis for a restriction between the two groups of claims." and "As an examination of the plural oils recited in claim I will confirm, each of the identified species are directed to "oils" derived from a plant or plant part, and as such are believed to be sufficiently technically related so that there would be no undue burden placed upon the Examiner in performing a single search which would be commensurate with the scope of the claimed "oils" of claim I, and thus obviate the Examiner's basis for a restriction between the specified oils recited *supra* and in claim I.

This is not found persuasive because, as was demonstrated in the restriction requirement mailed on 01/23/2009, the invention of Group II was found to have no special technical feature over the prior art of Smirnov et al. As such, the restriction requirement was proper. The species

requirement is also proper because the different method require different ingredients. Therefore, each method is patentably distinct. The requirement is still deemed proper and is therefore made FINAL.

2. Upon further consideration, the Examiner has decided to extend the search to include the species of citrus oil and lemon grass oil.

3. Claim 13 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and claims 9-10 are withdrawn as being directed to a non-elected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 02/10/2009.

4. Claims 1-8 and 11-12 are currently under consideration as they read on a method of deactivating an allergen comprising dispersing into an airspace capable or able to support said allergen an allergen-deactivating amount of a deactivant comprising citrus oil or lemon grass oil.

.

5. Applicant's IDS document filed on 05/10/2006 is acknowledged. Documents without a publication date and an author have been crossed out.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-8 and 11-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7, 10-11 and 19 of copending Application No.10/597,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant claims 1-8 and 11-12 are directed to a method of deactivating an allergen, the method comprising: dispersing into an airspace capable or able to support said allergen an allergen- deactivating amount of a deactivant an allergen deactivating compound comprising one or more of the following materials: a citrus oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass. and claims 7, 10-11 and 19 are directed to a method for treating an allergen-contaminated inanimate substrate comprising: dispersing an allergen-reducing amount of an allergen-deactivating compound dispersed into an airspace in at which an allergen-contaminated inanimate substrate is located, to provide achieve a prolonged reduction in the allergen loading

of the substrate, wherein the reduction after 14 days is at least as great as the initial reduction of claim wherein the deactivant is selected from: a citrus oil including orange oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grass or a component thereof.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-8 and 11-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No.10/597,463. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant claims 1-8 and 11-12 are directed to a method of deactivating an allergen, the method comprising: dispersing into an airspace capable or able to support said allergen an allergen- deactivating amount of a deactivant an allergen deactivating compound comprising one or more of the following materials: a citrus oil; a mint oil; bois de rose oil; oil of jasmine; frankincense; oil of bergamot; and oil of lemon grassand claims 1-13 of Application 10/597,463 are directed to a method of deactivating an allergen from the mite species Der fl or Der pl, the method comprising the step of: dispersing into an airspace an allergen-deactivating amount of an allergen- deactivating compound, said compound being provided in the form of an oil-in- water emulsion comprising at least 8% weight of a deactivant comprising one or more of the following materials: a citrus oil; a mint oil; bois de rose oil; oil of

jasmine; frankincense; oil of bergamot; and oil of lemon grass, said emulsion being dispersed into the airspace as a vapour.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-8 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 01/76371 (Reference 2; IDS filed on 07/26/2006).

WO 01/76371 teaches a method of deactivating an allergen, the method comprising: dispersing into an airspace capable or able to support said allergen an allergen- deactivating amount of a deactivant comprising extracted oil of lemon grass (citronella oil) (page 8, line 1, page 10, line 18, figure 1, figure 3, whole document); wherein the deactivant is dispersed into the airspace as a vapour over an extended period, by the use of heat (page 2, lines 11-13, whole document), wherein the deactivant is dispersed via a wick dipped into a reservoir of the deactivant (page 5, line 11 to page 6, line 17, whole document) wherein the deactivant is provided as a water-in-oil emulsion containing 2% by weight (page 4, lines 32 to page 5, line 8,

claim 8, whole document); wherein the deactivant is incorporated into a candle (page 5, line 11 to page 6, line 17, whole document); wherein the deactivant is dispersed into the airspace on two or more separate periods (two hours) (claim 10); wherein the citronella oil contacts the allergen (page 2, line 17-20, whole document) ; and a method of deactivating allergens on a surface located within an airspace which comprises the step of: dispersing into said airspace oil of lemon grass (figure 1, page 8, line 1, whole document).

Claims 1-8 and 11-12 are included in this rejection because citronella oil is oil extracted from lemon grass.

The reference teachings anticipate the claimed invention.

11. No claim is allowed.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nora M. Rooney whose telephone number is (571) 272-9937. The examiner can normally be reached Monday through Friday from 8:30 am to 5:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 1, 2009

Nora M. Rooney

Patent Examiner

Technology Center 1600

/Nora M Rooney/

Examiner, Art Unit 1644